

	OAH 8-2000-20088-2 (Brown) OAH 8-2000-20089-2 (Steele)
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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the Trespass Citation Issued to Benjamin Dale Brown In the Matter of the Appeal of the Trespass Citation Issued to Bradley Allen Steele	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
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These consolidated appeals from two Trespass Citations came before Administrative Law Judge Eric L. Lipman during a telephone Pre-hearing Conference on January 5, 2009. By agreement of the parties, the Pre-Hearing Conference was converted into a telephonic evidentiary hearing, during which the parties submitted evidence under oath and cross-examined witnesses.

Benjamin Dale Brown and Bradley Allen Steele, each appeared on their own behalf and without counsel. Conservation Officer Eugene Wynn appeared on behalf of the Minnesota Department of Natural Resources ("the Department" or "DNR").

STATEMENT OF THE ISSUES

1. Does a Field Citation for Trespass properly lie under Minn. Stat. §§ 97B.001 and 97B.002 in a case where the trespassing hunter did not specifically intend to enter agricultural land without permission of the landowner?

2. Should the Field Citations be affirmed and made the Final Order of the Commissioner?

For the reasons set forth below, the Administrative Law Judge concludes that: (1) a Field Citation for civil trespass may properly lie against a person who enters agricultural property without the permission of landowner, even in a circumstance where the person who enters the property did not have specific intent to trespass; and (2) the Field Citations issued in this matter should be affirmed and made the Final Order of the Commissioner.

Based upon the files and proceeding herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On the evening of October 29, 2008, Appellants Brown and Steele were hunting raccoons in Pine County, Minnesota.¹

2. The farmland and adjacent woods where the hunt took place is owned by members of the Werner family.²

3. Brown and Steele had hunted on the Werner property in years past with their friend and hunting partner, John Moe.³

4. While Mr. Moe was not with Brown and Steele for the outing on October 29, Brown and Steele believed that Moe had permission from the Werners to hunt raccoons on the property; and that the Werners had no objection to other sportsmen entering on to the farmstead and woods for this purpose.⁴

5. Neither Mr. Brown nor Mr. Steele had spoken to any of the Werners about hunting for animals on the farmland or the adjacent woods.⁵

6. Approaching the property on October 29, Brown and Steele parked the truck that they were using that evening on a roadway that separates two farms – specifically, the farm that is owned by Rosemary Werner and the farm that is owned by Ms. Werner's son and daughter-in-law, Robert and Laurel Werner.⁶

7. As the two men undertook their hunt for raccoons, a member of the Werner household telephoned the Pine County Sheriff's office to report a trespass. Later, when the authorities arrived at the scene, Gary Werner, Rosemary Werner's son, insisted that Brown and Steele each be charged with trespass.⁷

8. Conservation Officer Eugene Wynn issued Citation 41263 for Civil Trespass to Mr. Brown and Citation 41264 for Civil Trespass to Mr. Steele.⁸

9. Messrs. Brown and Steele submitted timely appeals of the Citations.⁹

¹ See, Testimony of Benjamin Brown; Testimony of Bradley Steele; Letter of Major William Spence (November 25, 2008).

² See, Testimony of Eugene Wynn.

³ See, Test. of B. Brown; Test. of B. Steele.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ See, Testimony of Eugene Wynn.

⁸ *Id.*

⁹ See, Letter of Major William Spence (November 25, 2008).

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of Education have jurisdiction in this matter pursuant to Minn. Stat. §§ 97B.002, subdivision 3, and 116.072, subdivision 6.

2. The Notice of Hearing in this matter was proper in form and content, and the Department has complied with relevant substantive and procedural requirements of statute and rule concerning the due process hearing.

3. The activities of Brown and Steele qualified as “outdoor recreation,” as those terms are used in Minn. Stat. § 97B.001, subd. 1a.

4. Neither Brown, nor Steele, had permission to enter agricultural land (specifically, the Werner property) for outdoor recreation, as those terms are used in Minn. Stat. § 97B.001, subd. 2.

5. Neither Brown, nor Steele, entered on to the Werner farmstead for the purpose of retrieving either wounded game, or a hunting dog, as these purposes are set forth in Minn. Stat. § 97B.001, subd. 5 or 6.

6. A violation of the civil trespass law would lie against Brown and Steele, even if it could be established that neither man specifically intended to trespass on to the Werner Farm. The lack of specific intent to trespass does not vitiate the violation. See, Minn. Stat. § 97B.001 (2008).

Based upon the Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge respectfully recommends that the Commissioner of Natural Resources AFFIRM Field Citations 41263 and 41264.

Dated: January 16, 2009

s/Eric L. Lipman

ERIC L. LIPMAN
Administrative Law Judge

Reported: Digitally recorded.

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 69 (e), the Commissioner of Natural Resources may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner and the Commissioner will consider the comments. The final order of the Commissioner may be appealed pursuant to Minn. Stat. §§ 14.63 - 14.69.

MEMORANDUM

Pointing to the Minnesota Supreme Court's decision in *State v. Brechon*, 352 N.W.2d 745 (Minn. 1984), Messrs. Brown and Steele argue that the Field Citations issued to them should be dismissed. Brown and Steele contend that because they did not intend to trespass upon the Werner farm, and in good faith believed that the landowners did not object to raccoon hunters being on this land, the Citations for trespass are not warranted.

For a number of reasons, the holding in *State v. Brechon* does not support a dismissal of the Citations. First, the case of *State v. Brechon* involved a prosecution for criminal trespass – a wholly different action, authorized by a different statute than the one relied upon by the Department in this case, and one involving different burdens of proof. If, for example, the Department sought to have a restraint placed upon Brown or Steele (such as a jail sentence or some other restriction of their liberty), it would have to establish that the hunters *intended* to enter the property without a claim of right.¹⁰ Yet, proof of this intention – or “guilty mind” – is not a requirement when the Department seeks to impose a modest civil penalty.¹¹ In this non-criminal context, it is enough that the Department has established that Brown and Steele entered on to a type of property that is covered by the statute, for an outdoor recreational purpose, and without permission to do so. This, the Department has established.

Likewise significant, the civil trespass statute, with its more modest sanctions and reduced burdens of proof, was not enacted by the Minnesota Legislature until two years after the decision in *State v. Brechon* was handed down.¹² The rule of *State v. Brechon*, therefore, does not guide the disposition of this case.

The appeals are not well taken and the Citations should be affirmed.

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¹⁰ See, *State by Humphrey v. Alpine Air Products, Inc.*, 500 N.W.2d 788, 792 (Minn. 1993); *Riley v. Jankowski*, 713 N.W.2d 379, 392-93 (Minn. App. 2006).

¹¹ See, *id.*

¹² Compare, 1986 Laws of Minnesota, Chapter 386, Article 2, Section 1.